Before the

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Consolidated Petitions for)

Arbitration of Interconnection) D.T.E. 96-73/74, 96-75,

Agreements, Phase 3, re: Unbundled) 96-80/81, 96-83, & 96-94

Network Element Combinations)

COMMENTS OF MCI WORLDCOM, INC. REGARDING

BELL ATLANTIC'S "COMPLIANCE FILING"

I. BACKGROUND AND INTRODUCTION

MCI WorldCom, Inc. ("MCI WorldCom") submits these comments in response to the Department's Procedural Notices of October 27, 1999 and November 10, 1999, as well as in response to Bell Atlantic's June 18, 1999 "compliance filing" and Bell Atlantic's December 1, 1999 Comments in the above proceeding.

On March 19, 1999 the Department issued its Order in Phase 4-J of the Consolidated Arbitrations which required Bell Atlantic to provide the UNE Platform as well as other existing combinations of UNEs at the sum of the prices for the individual UNEs that make up that combination. See, Phase 4-J Order, pp. 9-10 and footnote 15. On May 21, 1999, the Department issued its Order in Phase 4-K of the Consolidated Arbitrations ordering Bell Atlantic to additionally submit a proposal to provide CLECs with means to access and combine UNEs themselves that did not impose a facilities requirement on those carriers. See, Phase 4-K Order, p. 9. Instead of submitting a compliance filing to provide CLECs with a means other than collocation to combine UNEs for themselves, Bell Atlantic misused the occasion of the compliance filing as an attempt to shirk Department orders and stymie the growth of competition in Massachusetts by misrepresenting the Department's intentions in its decision in Phase 4-K. Specifically, Bell Atlantic used the opportunity of its compliance filing as an attempt to:

1. Ignore its obligation to provide CLECs with combinations of elements that it

currently combines, as required by the Department's Phase 4-J Order in the Consolidated Arbitrations,

2. Impose arbitrary, illegal, non-cost based charges and discriminatory restrictions on CLECs who choose to purchase combinations of UNEs from Bell Atlantic consistent with the Department's Phase 4-J Order, and

3. Ignore the Department's Order in Phase 4-K that requires Bell Atlantic to provide CLECs with the ability to combine elements that cannot be found in Bell Atlantic's network in combined form in such a manner as to not impose a facilities requirement on those CLECs.

Bell Atlantic attempted to accomplish this by playing semantic gymnastics with the Department's Phase 4-J Order and FCC Rule 315(b) to support its arguments that it need only allow CLECs to purchase combinations of elements if the customer that the CLEC wishes to serve has been a Bell Atlantic customer for at least six months.

Practically since the day the Telecommunications Act became law, Bell Atlantic has engaged in a protracted challenge to the proposition that the Act requires it to offer a loop and port in combined form to would-be competitors at rates established using the "bottoms-up" UNE pricing methodology.

In its Phase 4-J Order in the Consolidated Arbitrations, the Department found that, "as required by the Supreme Court decision...Bell Atlantic shall make existing combined UNEs, including the UNE platform, available to all CLECs in their combined form." (Phase 4-J Order, pp. 9-10). Yet, until its most recent December 1, 1999 filing, Bell Atlantic continued to refuse to do so if the CLEC orders UNE platform to serve a customer who needs a new telephone line.(1) Instead, Bell Atlantic has spent the last ten months in an attempt to stall and limit the availability of the UNE-Platform through regulatory gamesmanship, a result the Department could never have intended.

In its Phase 4-J Order, the Department clearly ordered Bell Atlantic to provide UNE-Platform, "...at the sum of the prices for the individual UNEs that make up the combination." (Phase 4-J Order, p. 10, fn. 15). The Department's decision in this case was clearly based on the Supreme Court's ruling in AT&T which requires ILECs to provide CLECs with the same combinations that can be found in their networks. Specifically, in AT&T, the Supreme Court upheld FCC Rule 315(b), which states the following:

Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

(Emphasis added.) 47 C.F.R. Ch. 1 §51.315(b) Accordingly, pursuant to Rule 315(b), if any network elements exist anywhere in Bell Atlantic's network in a combined form, they are network elements that Bell Atlantic "currently combines" and must also provide in combined form to CLEC customers. Because Bell Atlantic currently combines elements for its own customers who order new lines from Bell Atlantic, it must also do so for CLEC customers. Such a determination is also supported by language in the FCC's UNE Remand Order. Although the FCC stated that it would decline to reinstate Rules 51.315(c) - (f), because those rules were being considered by the Eighth Circuit, the language of the UNE Remand Order clearly supports MCI WorldCom's position that no distinction should be drawn between

existing combinations of loop and port and new loop and port combinations. Specifically the FCC noted:

as a general matter, however, we believe that the reasoning of the Supreme Court's decision to reinstate rule 51.315(b) based on the nondiscrimination language of section 251(c)(3) applies equally to rules 51.315(c)-(f). Specifically, the Court held that section 251(c)(3)'s non-discrimination requirement means that access provided by the incumbent LEC must be at least equal in quality to that which the incumbent LEC provides to itself. We note that incumbent LEC's routinely combine loop and transport elements for themselves. For example, incumbent LECs routinely provide combinations of loop and transport elements for themselves in order to: (1) deliver data traffic to their own packet switches; (2) provide private line services; and (3) provide foreign exchange service. In addition, we note that incumbent LECs routinely provide the functional equivalent of the EEL through their special access offerings.

We believe that the basis upon which the Eighth Circuit invalidated rules 51.315(c)) - (f) has been called into question by the Supreme Court's decision. In particular, the Eighth Circuit determined that "unbundled" meant physical separation of network elements. The Supreme Court clarified that "unbundled" means "separate prices." The Supreme Court also stated that section 251(c) "does not say, or even remotely imply, that elements must be provided [in discrete pieces, and never in combined form.]" We also note that an additional basis for the Eighth Circuit's decision to invalidate rules 51.315(b)-(f) was its understanding that incumbents "would rather grant their competitors access to their facilities" than combine elements on behalf of requesting carriers. Experience over the last year demonstrates that incumbent LECs have refused to provide access to network elements so that competitors could combine them, except in situations where competitive LECs have collocated in the incumbent's central offices. Accordingly, we believe that section 251(c)(3) provides a sound basis for reinstating rules 51.315(c)-(f).

In Phase 4-J of the Consolidated Arbitrations, the Department ordered Bell Atlantic to provide the UNE Platform at the sum of the existing individual elements. Although the Department did not create an exception for CLEC customers who order new lines, Bell Atlantic continued to do its best to limit CLEC access to UNEs by unilaterally interpreting the Department's Order to mean that it is only required to provide UNE-Platform to CLECs in those instances where the CLEC customer was formerly a Bell Atlantic customer and now wished to migrate to a CLEC for service using the UNE Platform. In its Notice the Department asked carriers to answer the following question:

Should the definition of "UNEs that were previously combined" be limited to discrete physical elements on a customer-specific basis or should the definition be viewed more generically as UNEs that were previously combined by Bell Atlantic for the offering of any retail product to any retail customer.

Notice, p. 1.

The absurdity of Bell Atlantic's proposed existing customer/new customer dichotomy can readily be seen with a simple example. According to Bell Atlantic, a CLEC could offer residential service to Mr. Smith by using a loop port combination if Mr. Smith is an existing Bell Atlantic customer for this service. The network facilities used to provide residential service to Mr. Smith's house are currently connected. If Mr. Smith, however, were to sell this house to his friend Ms. Brown, under BA's original proposal the CLEC would not have been able to offer service to her because she is not an existing Bell Atlantic customer. The same local loop, the same switch

port--and the same connection between them-- would remain in place, but Bell Atlantic would no longer consider these facilities to be connected for the purpose of defining a UNE combination that could be purchased.

The equal absurdity of the proposed existing location/ new location dichotomy is also readily apparent from the following example. As long as Mr. Smith stays in his existing house (where he is a Bell Atlantic customer), a CLEC may offer residential service to him by using a loop-port combination. If, however, Mr. Smith were to build a new house down the street that will also be served by Bell Atlantic's network, the CLEC will be unable to provide service to him using a loop-port combination even though the connection from the new house to the Bell Atlantic network (including the loop to port connection) will have been established. Presumably, however, if Mr. Smith first signs up for Bell Atlantic's residential service offering, he would then be eligible to be served by a CLEC using a loop-port combination because he would no longer represent a new location (so long, of course, that the CLEC is prove to Bell Atlantic's satisfaction that the customer has not established service under Bell Atlantic's retail tariff or as a resold line only to be converted within a six month period to avoid Bell Atlantic's unilaterally imposed, non-cost based "glue fee").

The marketing advantage to Bell Atlantic in these situations is clear. A CLEC that wishes to provide service via UNE combinations will be unable to offer service to new customers moving into the area, because these customers will not yet be "existing customers" per the Bell Atlantic definition. The CLEC would also not be able to offer service to a new or existing customer at a new location, because the location would not be an "existing location" per Bell Atlantic. This restriction on competitive entry through the use of UNE combinations would exist even though the loop and port facilities that would be used would exist in combined form in Bell Atlantic's network at the time the CLEC sought to offer service. Bell Atlantic's "no one can become a CLEC customer without becoming a Bell Atlantic customer first" policy creates a significant marketing advantage for Bell Atlantic and is an anticompetitive market entry barrier on its face.

II. BELL ATLANTIC'S PROPOSED IMPOSITION OF COSTS AND LIMITATIONS ON CLEC ACCESS TO THE UNE-PLATFORM FOR"NEW CUSTOMERS" IS ANTICOMPETITIVE, DISCRIMINATORY AND AT ODDS WITH THE FCC'S RULES

In its June 18, 1999 filing, Bell Atlantic "volunteered" to provide the UNE Platform to CLEC customers for new installations subject to a panoply of discriminatory terms and conditions. These include:

Sunset provisions: CLECs will only be able to purchase the UNE-Platform for new installations until 2003, and

CLECs will not be permitted to purchase UNE-Platform for new installations in any central office where a single CLEC is collocated (compliance filing, pp. 4-5).

In addition, CLECs who purchase the UNE-Platform from Bell Atlantic would be required to pay arbitrary, anti-competitive and discriminatory charges that Bell Atlantic admittedly explains are not based on the costs Bell Atlantic incurs to combine these elements.(2) These costs are comprised of:

A monthly "glue fee" of $4.69 to $33.46 depending on the type of loop ordered.

A "quick flip charge" if a Bell Atlantic customer migrates to a CLEC within 6 months of initiating service with Bell Atlantic.

These restrictions and costs are completely at odds with the Supreme Court's rationale for upholding Rule 315(b). Specifically, in reinstating the FCC's Rule 315(b) which states that "an incumbent LEC shall not separate requested network elements that the incumbent already combines,"(3) the Court found this rule, "is entirely rational, finding its basis in §251(c)(3)'s nondiscrimination requirement."(4) In fact, the Court found that without Rule 315(b) permitting competitors to have access to combinations of UNEs, "incumbents could impose wasteful costs on even those carriers who requested less than the whole network."(5) Bell Atlantic's June 18, 1999 proposal imposes just these sort of wasteful costs -- while it makes it possible for CLECs to avoid collocation (at least in some instances), it requires them to pay for it anyway through glue fees and "quick flip charges", and thus cannot be squared with the Act, the FCC's rules, or the orders and policies of this Department.(6)

Moreover, Bell Atlantic's proposed glue fees and quick flip charges are squarely at odds with the FCC's pricing rules. The FCC rules which directly apply to the issues before the Department in this case are clear and unambiguous. Nothing in the FCC's rules suggests, or even remotely implies that the pricing standard depends upon whether a particular element is obtained discretely or in combined form. The key FCC pricing rules which control the Department's decision in this proceeding are excerpted below:

Section 51.503 General Pricing Standard

(a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and non-discriminatory.

(b) An incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in Sections 51.507 and 51.509 of this part, and shall be established, at the election of the state commission --

(1) pursuant to the forward-looking economic cost-based pricing methodology set forth in Sections 51.505 and 51.511 of this part, or

(2) consistent with the proxy ceilings and ranges set forth in section 51.513 of this part.

(c) The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide.

There is one UNE pricing standard in the FCC's Rules and the Act. Whether a carrier obtains a network element discretely, or in combined form, the carrier is entitled to a cost based rate. It is not in Bell Atlantic's discretion to impose non-discriminatory and non-cost based rates on CLECs.

Bell Atlantic justifies its proposed discriminatory charges by stating that the Department invited it to propose a glue fee in its Phase 4-K Order. Bell Atlantic December 1, 1999 Comments, p. 11. First, as discussed above, the Phase 4-K Order was addressing combinations of elements not ordinarily found in combined form in Bell Atlantic's network, not UNE-Platform which it had already ordered Bell Atlantic to provide in its Phase 4-J Order at rates equivalent to the sum of UNEs individual rates. Second, even if the Department had anticipated Bell Atlantic's new vs. existing customer dichotomy, nowhere did the Department intimate that rates for combining elements should somehow depart from cost. The Department was merely expressing that if Bell Atlantic were to combine elements that are not ordinarily found in combined form on behalf of CLECs then it could recover the costs of assembling those UNEs via a "glue fee". Bell Atlantic, however, has assumed this to be an invitation to recover supra normal profits from its competitors -- a result the Department surely never intended.

III. THE DEPARTMENT HAS THE AUTHORITY TO REQUIRE BELL ATLANTIC TO PROVIDE NEW COMBINATIONS OF ELEMENTS

As MCI WorldCom explained above, the notion that UNE-Platform is a preexisting combination of elements, whether the CLEC wishes to use UNE-Platform to serve new or existing customers, is supported by both common sense and the FCC's rules. Nonetheless, even if the Department were to find that Bell Atlantic's existing customer vs. new customer dichotomy has any theoretical merit, the Department's authority to require Bell Atlantic to provide UNE combinations to both new and existing locations has been recently confirmed by the United State Court of Appeals, Ninth Circuit in U.S.West Communications v. MFS Intelenet, Inc., F3d. , 1999 WL 799082 (9th Cir. Oct. 8, 1999). In this case, the Ninth Circuit held that the Washington Utilities and Transportation Commission ("WUTC")'s actions in ordering US West to provide combinations of elements to MFS was consistent with the Supreme Court's decision in AT&T. Specifically, the Ninth Circuit found:

In sustaining a provision that prohibited the incumbent from separating already-combined elements before leasing, the Supreme Court held that the phrase, "on an umbundled basis," does not necessarily mean "physically separated"; an equally reasonable interpretation is that it means separately priced. The Court also held that the statutory language requiring incumbent carriers to "provide such unbundled network element in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service" indicates that network elements may be leased in discrete parts, but "does not say, or even remotely imply, that elements must be provided only in this fashion and never in combined form." It follows, the Court held, that the FCC regulation prohibiting an

incumbent carrier from separating already-combined network elements was not inconsistent with the Act. (Citations omitted).

The Ninth Circuit continued:

It also necessarily follows from AT&T that requiring US West to combine unbundled network elements is not inconsistent with the Act: the MFS combination provision does not conflict with the Act because the Act does not say or imply that network elements may only be leased in discrete parts.

US West nevertheless argues that the Eighth Circuit's invalidation of the FCC regulation that required incumbent carriers to combine unbundled elements for competing carriers requires this court to conclude that the MFS combination provision violates the Act. The Supreme Court opinion, however, undermined the Eighth Circuit's rationale for invalidating this regulation. Although the Supreme Court did not directly review the Eighth Circuit's invalidation of § 51.315(c)-(f), its interpretation of 47 U.S.C. §251(c)(3) demonstrates that the Eighth Circuit erred when it concluded that the regulation was inconsistent with the Act. We must follow the Supreme Court's reading of the Act despite the Eighth Circuit's prior invalidation of the nearly identical FCC regulation.

U.S.West Communications v. MFS Intelenet, Inc., F3d , 1999 WL 799082 *6 -*7. (citations omitted).

The Department has properly ruled that Bell Atlantic must provide UNE-Platform to CLECs at rates that are equivalent to the sum of the UNEs that comprise the UNE-Platform offering. As MCI WorldCom explained, UNE-Platform is an existing combination of UNEs whether or not UNE-Platform is used to serve "new" or "existing" locations. Even if the Department were to have meant, when it issued the Phase 4-J Order, that whether a particular combination is preexisting is based on a particular CLEC customer's location, it is now exceedingly clear, based on the Ninth Circuit's decision cited above, that the Department has the authority to require Bell Atlantic to provide UNE-Platform in all instances and should immediately do so based on the substantial record in the Consolidated Arbitrations.

In its December 1, 1999 filing, Bell Atlantic states that the Department need not reach this issue and should await the Eighth Circuit's ruling on this issue. Bell Atlantic December 1, 1999 Comments, p. 13. Moreover, Bell Atlantic states that because, "BA-MA has reassessed its position concerning new loop and local switching UNE-P combinations," and "will voluntarily provide that combination even where the loop and local switching elements comprising the UNE-Platform do not already exist in combined form for a specific customer in its network." Id. However, Bell Atlantic hints that it may in fact attempt to modify the pricing of certain elements of UNE combinations, specifically, unbundled switching, OS/DA and shared transport, at some undisclosed time in the future and in some yet undisclosed manner.

The Department has the authority to order Bell Atlantic to provide UNE combinations for not only for existing customers but also for new lines and it should exercise its authority to do so here, pending the outcome of the Eighth Circuit's ruling on

FCC Rules 51.315(c)-(f). CLECs have waited far too long for Bell Atlantic to begin abiding by the terms of the Department's Order in Phase 4-J and implementation of the Department's Order, and should not be subject to further delay or Bell Atlantic whim. A full scale product launch requires regulatory certainty and cannot be left up to Bell Atlantic's discretion to pull the plug on its "voluntary" offering tomorrow. Accordingly the Department should continue down the path that it has started here and find that the definition of "UNEs that were previously combined," should not be limited to customer specific locations as Bell Atlantic suggests in its June 18, 1999 compliance filing.

IV. BELL ATLANTIC'S ENHANCED EXTENDED LINK ("EEL") PROPOSAL

As with total element combinations (UNE-Platform), Bell Atlantic has resisted offering CLECs a useful loop-transport combination ("EEL") in Massachusetts. As part of its D.T.E. Tariff No. 17, Bell Atlantic has filed a proposed tariff for Expanded Extended Link (EEL), a combination of unbundled loop plus transport which could reduce a CLEC's need for collocation by enabling the CLEC to carry traffic from a customer to a remote central office in the LATA where it has a collocation.(7) This offering, however, is replete with discriminatory restrictions and costs which demonstrate how far Bell Atlantic has to go to fulfill the requirements of the section 271 checklist.(8)

Bell Atlantic has continued to claim that EELs are not existing combinations of UNEs under Rule 315(b), the Supreme Court's decision in AT&T, and this Department's orders, and thus that its provision of EELs is "voluntary." Bell Atlantic, however, is fundamentally wrong in its position that EELs are "new combinations" of UNEs. An EEL is simply a combination of loop and transport. Bell Atlantic has stated that it sells at retail private lines, see Technical Session, DTE 99-271 (Nov. 19, 1999), vol. 10 at 1953, which are made up of the very same combination of network elements. Moreover, Bell Atlantic admits that a carrier such as MCI WorldCom that purchases service out of an access tariff is purchasing loop and transport,(id. at 1972), and could provide its own dial tone over these facilities, provided it had its own switch. Id. at 1973-74. This is in fact precisely how MCI WorldCom has begun to provide local service to many business customers in Massachusetts because of Bell Atlantic's refusal to make loop and transport available at UNE rates. Consequently, it is clear that loop-transport combinations already exist within the Bell Atlantic network for retail purchase, even before taking into account any internal Bell Atlantic uses of this combination. Accordingly, pursuant to the FCC"s new Rule 319, Bell Atlantic is legally obligated to make this combination of network elements available to CLECs, at least in most situations.(9) The FCC stated that, at a minimum,

To the extent an unbundled loop is in fact connected to unbundled dedicated transport, the statute and our rule 51.315(b) require the incumbent to provide such elements to requesting carriers in combined form. . . . [I]n specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices.

Rule 319 Order, ¶ 480 (emphasis added). (10)

In a Supplemental Order amending its Rule 319 Order, the FCC made clear that while it would reserve judgment on whether IXCs could obtain combinations of unbundled loop and transport purely as a substitute for special access until the conclusion of its Fourth FNPRM, an ILEC many not constrain the availability of unbundled

loop-transport combinations "if an IXC uses combination of unbundled network elements to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." Supplemental Order at ¶¶ 2, 5. The Commission then specifically stated that its Supplemental Order "does not affect the ability of competitive LECs to use combinations of loops and transport (referred to as the enhanced extended link) to provide local exchange service." Id. at ¶ 5. Bell Atlantic's tariff offering runs afoul of all of these holdings.

In its original proposed tariff, Bell Atlantic imposed illegitimate and anticompetitive restrictions on the composition and use of EELs. Bell Atlantic proposed to provide EELs comprising only two-wire analog or digital loops, DS1 or DS3 transport, and associated multiplexing. (See, Proposed BA Tariff DTE MA No. 17, § 13.1; Bell Atlantic Response DTE-RCN 1-5 (September 24, 1999). It refused to provide four-wire loops as a part of this offering, despite the fact that it offers private line service in Massachusetts at speeds higher than that provided over a two-wire analog loop, and makes four-wire EELs available in New York. See, Technical Session, DTE 99-271 (Nov. 19, 1999), vol. 10 at 1952-53, 1976; See also, Technical Session, DTE 99-271 (November 18, 1999), vol. 9 at 1781-83 (indicating that Bell Atlantic does not offer DS-1 grade loops as EELs) and even though it was forced to admit that there is absolutely no technical reason for this limitation. See Technical Session, DTE 99-271 (Nov. 19, 1999), vol. 10 at 1971-72. By refusing to provide four-wire loops as part of EELs, Bell Atlantic in effect refused to provide adequate means of combining one type of UNE - the four wire loop - with transport. Bell Atlantic has also subjected carriers to onerous and anti-competitive auditing requirements and would only allow CLECs to purchase EELs that terminated to a CLEC collocaton node. (Bell Atlantic December 1, 1999 Comments).

In its December 1, 1999 Comments, Bell Atlantic concedes that these restrictions are inconsistent with the UNE Remand Orders and thus proposes to amend its tariff offering. (December 1, 1999 Comments, p. 16). However, it is not clear whether Bell Atlantic intends to remove the panoply of additional discriminatory terms, conditions and costs in its proposed EEL tariff. On the pricing front, in addition to the recurring and nonrecurring charges associated with the elements comprising the EEL, Bell Atlantic adds recurring and highly anticompetitive glue charges. Specifically, Bell Atlantic plans to assess a "combination" charge, the basis of which is entirely unexplained, and a "connection" charge "to recover the additional cost associated with the network investment necessary to connect the network elements associated with EEL and/or to provide test access to EEL." Proposed BA Tariff DTE MA No. 17, § 13.5.1.A; Bell Atlantic Response DTE-RCN 1-4 (September 24, 1999) in D.T.E. 99-271. Bell Atlantic has offered no factual cost justification for either charge, nor even an explanation of the difference between the two. Indeed, the "connection" charge appears to duplicate charges already covered in the individual element rates, such as the costs of testing. Bell Atlantic's proposal to collect recurring glue charges is all the more outrageous since Bell Atlantic has not even provided documentation that would support a nonrecurring charge for any independent and thus otherwise uncompensated costs associated with provisioning an EEL. The glue charges Bell Atlantic proposes for EEL are highly discriminatory, for they bear no apparent relationship to costs incurred by Bell Atlantic and thus can be set at an arbitrary level to provide a leverage that will allow Bell Atlantic consistently to underprice its competitors.(11) In addition, these discriminatory charges are clearly inconsistent with the FCC's UNE Remand Order which requires that:

in specific circumstances, the incumbent is presently obligated to provide access to the EEL. In particular, the incumbent LECs may not separate loop and transport elements that are currently combined and purchased through the special access tariffs. Moreover, requesting carriers are entitled to obtain such existing loop-transport combinations at unbundled network element prices.(12)

To date, Bell Atlantic has consistently refused to convert loop-transport

combinations that CLECs purchase from Bell Atlantic's special access tariff to UNE Pricing. Even in the wake of the UNE Remand Orders, Bell Atlantic continues to try to limit CLEC access to these existing combinations by insisting that before CLECs can receive UNE pricing for these combinations they must disconnect their existing customer bases and then reconnect them once again -- a wasteful and costly exercise since converting from special access to UNE pricing is merely a change in billing and one in which the CLEC would run the risk of interrupting a customer's service -- a risk that Bell Atlantic knows no CLEC will be willing to take . See Attachment A. Accordingly, the Department should order Bell Atlantic to immediately allow CLECs to convert loop-transport combinations purchased out of the special access tariff to UNE pricing, remove all discriminatory use restrictions from its EEL tariff and amend its EEL tariff immediately to include all loop-transport combinations.

V. BELL ATLANTIC HAS NOT EVEN ATTEMPTED TO COMPLY WITH THE DEPARTMENT'S DIRECTIVE THAT IT MUST MAKE CLEC ACCESS TO UNES WITHOUT COLLOCATION AS A PRECONDITION TO ITS APPROVAL TO PROVIDE INTERLATA LONG IDSTANCE SERVICE IN ACCORDANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT

In its Phase 4-K Order, the Department found that Bell Atlantic's requirement that CLECs collocate in order to access and combine UNEs is discriminatory and contradictory to the requirements of both the Telecommunications Act and the Department's goals (Phase 4-K Order, p. 30). As such, the Department properly ruled that approval of a lawful non-discriminatory means of provisioning new combinations of elements is a necessary precondition for Bell Atlantic to receive a favorable ruling on a Section 271 filing. (Id. p. 27). Accordingly, the Department ordered Bell Atlantic to come forward with a proposal for provisioning UNEs that are not already found in combination in the Bell Atlantic network in such a way that permits combination by competing carriers, but without imposing a facilities requirement. Bell Atlantic's proposal in this case does not even pretend to address the Department's order in this case. Bell Atlantic has not identified how it will permit CLECs to access and combine UNEs that it does not offer currently in combined form in its network at all. Bell Atlantic does state that it will, "also provide other uncombined UNEs--which may exist in combined form elsewhere in Bell Atlantic's network -- less than the total platform...via a bona fide request process." (Bell Atlantic Compliance Filing, p. 5). As MCI WorldCom explained above, Bell Atlantic is already required to provide less than total combinations which exist in combined form in its network at rates equivalent to the sum of those UNES by virtue of both the Department's Phase 4-J order as well as the FCC Rules. Bell Atlantic has not, however, met the Department's requirement that it provide a proposal for CLEC access to UNEs that Bell Atlantic does not currently combine in its network in such a manner as not to impose a facilities requirement upon CLECs. As such, Bell Atlantic's proposal should be rejected.

VI. CONCLUSION

For the reasons above, MCI WorldCom requests that the Department reject Bell Atlantic's "compliance filing" and order Bell Atlantic to: (1) offer UNE combinations, including the UNE-Platform, for all CLEC customers regardless of their location at rates equivalent to the sum of the TELRIC rates for individual UNEs; and (2) remove all discriminatory restrictions and sunset provisions from Bell Atlantic's UNE-Platform proposal. MCI WorldCom also requests that the Department order Bell Atlantic to amend its EEL offering to (1) include all loop-transport combinations; (2) remove all discriminatory restrictions from its EEL proposal; (3) affirmatively and immediately require Bell Atlantic remove impediments to a CLEC's ability to

convert CLEC loop-transport combinations that are purchased out of the special access tariff to UNE rates; and (4) provide those loop transport combinations immediately.

Respectfully submitted,

MCI WORLDCOM, INC.

By its attorneys,

_____

Hope Barbulescu

MCI WorldCom, Inc.

5 International Drive

Rye Brook, New York 10574

(914)-312-2817

_____

Alan D. Mandl

Ottenberg, Dunkless, Mandl & Mandl LLP

260 Franklin Street

Boston, MA 02110

(617) 261-6566

Dated: December 15, 1999

1. Bell Atlantic also continues to fail to provide CLECs with 4-wire loop-transport combinations ("EEL") at UNE rates.

2. Bell Atlantic does not even pretend that these "glue fees" and "quick flip charges" are based on costs that Bell Atlantic incurs to combine the UNEs -- instead, Bell Atlantic readily admits that these costs are non-cost based. (Id., p. 6).

3. 47 C.F.R. §51.315(b) 1997.

4. AT&T Corp v. Iowa Utilities Bd., 1999 U.S. Lexis 903, January 25, 1999, pg. *44.

5. Id. at pp. *45.

6. MCI WorldCom notes that Bell Atlantic has offered UNE-Platform without glue fees or quick flip charges in New York. In fact, MCI WorldCom is not aware of any other state in which Bell Atlantic has even proposed " quick flip charges".

7. See Bell Atlantic Response DTE-RCN 1-1 (Sept. 24, 1999).

8. Relevant provisions of the proposed tariff were attached by Bell Atlantic in response to discovery requests DTE-RCN 1-4 and 1-5 (September 24, 1999). This Department must evaluate BA's offering of this UNE combination by reference to the tariff terms; Bell Atlantic had received no orders for EEL as of September 24, 1999, see Bell Atlantic Response, DTE-RCN 1-1 (September 24, 1999), nor apparently as of November 19, 1999. See Technical Session, DTE 99-271 (Nov. 19, 1999), vol. 10 at 1921. Moreover, as the tariff has not yet been approved, CLECs including MCI WorldCom cannot in fact currently order EELs without amending their interconnection agreements. See Technical Session, DTE 99-271 (Nov. 19, 1999), vol. 10 at 1970-71.

9. In the Rule 319 Order, the FCC declined to address whether ILECs should be required to combine unbundled network elements that are not already combined, as well as the related question of whether "currently combines" in Rule 315(b) means "ordinarily combined within their network, in the manner in which they are typically combined," citing the pending Eighth Circuit ruling on reinstating Rules 319(c)-(f). Rule 319 Order, ¶¶ 476-79. The FCC nonetheless indicated its continuing support for these rules, which would require ILECs to make UNE combinations available for new service, explaining that the basis of the Eighth Circuit's invalidation of these rules was based on the supposition that "unbundled" means "physically separated" rejected by the Supreme Court in IUB. See id. at ¶¶ 481-82.

In light of the clear anticompetitive effects of limiting the availability of EELs to provide local service, pending the outcome of the Eighth Circuit case, this Department should adopt a broad definition of "existing combination" that will ensure that CLECs have nondiscriminatory access to new exemplars of UNE combinations that Bell Atlantic routinely provides to itself and to its retail customers.

10. Bell Atlantic's insistence that all EELs are "new combinations" is inconsistent even with its own impoverished reading of Rule 315(b) in the context of UNE-Platform, where, as demonstrated below, Bell Atlantic at least recognizes that UNEs combined to provide existing local service are "existing combinations" which must be provided together, at the sum of their element costs.

11. Bell Atlantic's EEL offering also states that SAC and IAC charges associated with collocation will apply. See Proposed Bell Atlantic tariff DTE MA No.17, Section 13.15.1.C. But the entire purpose of the EEL is to avoid the costs associated with collocation. The collection of some other charges in addition to the SAC in conjunction with offerings other than EELs has proven highly discriminatory. Specifically, the SAC, or Service Access Charge, recovers the cost of pre-wiring from the CLEC collocation cage to the Main Distribution Frame. Bell Atlantic also assesses a Central Office Wiring non-recurring charge, which includes costs associated with running a jumper from the Main Distribution Frame ("MDF") to the CLEC collocation cage (which costs are already inflated by generous allowances of work time for this labor.) Bell Atlantic has assessed its Central Office Wiring non-recurring charge in situations where it has already assessed the SAC, thereby discriminating by double-collecting the costs of connecting the CLEC collocation to

the MDF. Where CLECs have already paid for pre-wiring through the SAC, the only additional work for which Bell Atlantic should be compensated is limited work at the MDF, referred to by Bell Atlantic as "cutting down". This and any other instances of double collection must be eliminated before Bell Atlantic can be found to satisfy Section 271.

12. UNE Remand Order, ¶480.